

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**KANA FARRELL, ORIANA LEE FARRELL,
as an individual and O.B.O. her minor children
HEZEKIAH FARRELL, II, KUSH FARRELL,
MAGNIFICENT FARRELL,
and GILBRALTAR FARRELL,**

Plaintiffs,

v.

No. 15-cv-1113 SMV/KRS

**TONY DETAVIS, ANTHONY LUNA,
ELIAS MONTOYA, NEW MEXICO STATE
POLICE DEPARTMENT, and JOHN DOES 1–3,**

Defendants.

ORDER PURSUANT TO REMAND FROM TENTH CIRCUIT


THIS MATTER is before the Court on the mandate issued by the Tenth Circuit Court of Appeals on February 13, 2018. [Doc. 84]. On August 30, 2016, this Court granted summary judgment in favor of Defendants Detavis, Luna, and the New Mexico State Police Department on all federal claims. [Doc. 69] at 37–38. The Court also granted summary judgment in favor of Defendant Montoya on all but one federal claim, which arose from his firing three shots at Plaintiffs' van. *Id.* The Tenth Circuit reversed on that issue. [Doc. 84-1] at 1–12. Now that the mandate has issued, and consistent with the circuit court's opinion, this Court vacates in part its Memorandum Opinion and Order dated August 30, 2016, [Doc. 69], to the extent that summary judgment was denied to Defendant Montoya for firing the three shots. Judgment will enter in favor of Defendant Montoya on that last federal claim.

The state tort and constitutional claims (counts IV and V) remain. Under 28 U.S.C. § 1367(c), district courts may decline to exercise supplemental jurisdiction over related state law claims if (1) the claims raise a novel or complex issue of State law, (2) the claims substantially predominate over the federal claims, or (3) the court has dismissed all claims over which it had original jurisdiction. “When all federal claims have been dismissed, the court may, and usually should, decline to exercise jurisdiction over any remaining state claims.” *Koch v. City of Del City*, 660 F.3d 1228, 1248 (10th Cir. 2011). Here, no federal claim remains. The Court declines to exercise supplemental jurisdiction over Plaintiffs’ state law claims. Accordingly, the Court will remand the state law claims to the First Judicial District Court, County of Santa Fe, State of New Mexico.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that summary judgment be **ENTERED in favor of Defendant Montoya** on the last remaining federal claim, which arose from his firing three shots at the van (Count I).

IT IS FURTHER ORDERED that Plaintiffs’ state tort and state constitutional claims (Counts IV and V) be **REMANDED** to state court.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge
Presiding by Consent